



2011 CHAPTER 24

PART 6

ALTERNATIVES TO PROSECUTION

CHAPTER 1

PENALTY NOTICES

*Penalty offences and penalties*

**Penalty offences and penalties**

**59.**—(1) For the purposes of this Chapter—

- (a) “penalty offence” means an offence described in the first column of Schedule 4;
- (b) the penalty payable in respect of a penalty offence is the amount specified in relation to that offence in the second column of that Schedule plus the amount of the offender levy determined under section 6.

(2) The Department may by order amend an entry in either column of Schedule 4 or add or remove an entry.

(3) But an order under subsection (2) may not provide for the penalty payable in respect of a penalty offence to be an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence.

(4) An order under subsection (2) may make such amendment of any provision of this Chapter as the Department considers appropriate in consequence of any change in Schedule 4 made by the order.

(5) No order shall be made under subsection (2) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

### *Penalty notices*

#### **Penalty notices**

**60.**—(1) A police officer who has reason to believe that a person over the age of 18 has committed a penalty offence may give that person a penalty notice in respect of the offence.

(2) Unless the notice is given in a police station, the police officer giving it must be in uniform.

(3) In this Chapter “penalty notice” means a notice offering the opportunity, by paying a penalty in accordance with this Chapter, to discharge any liability to be convicted of the offence to which the notice relates.

#### **Form of penalty notice**

**61.** A penalty notice must—

- (a) state the alleged offence;
- (b) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
- (c) specify the suspended enforcement period (as to which see section 63) and explain its effect;
- (d) state the amount of the penalty;
- (e) state the fixed penalty clerk to whom, and the address at which, the penalty may be paid; and
- (f) inform the person to whom it is given of the right to ask to be tried for the alleged offence and explain how that right may be exercised.

#### **Effect of penalty notice**

**62.**—(1) This section applies if a penalty notice is given to a person (“A”) under section 60.

(2) If A asks to be tried for the alleged offence, proceedings may be brought against A.

(3) Such a request must be made by a notice given by A—

- (a) in the manner specified in the penalty notice; and
- (b) before the end of the suspended enforcement period (as to which see section 63).

(4) A request which is made in accordance with subsection (3) is referred to in this Chapter as a “request to be tried”.

(5) If, by the end of the suspended enforcement period—

- (a) the penalty has not been paid in accordance with this Chapter, and
- (b) A has not made a request to be tried,

a sum equal to one and a half times the amount of the penalty may be registered under section 67 for enforcement against A as a fine.

### **General restriction on prosecution**

**63.**—(1) Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 28 days beginning with the date on which the notice was given (“the suspended enforcement period”).

(2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.

(3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

### **Guidance**

**64.** The Department may issue guidance—

- (a) about the exercise of the discretion given to police officers by this Chapter;
- (b) about the issuing of penalty notices;
- (c) with a view to encouraging good practice in connection with the operation of provisions of this Chapter.

### *Procedure*

### **Payment of penalty**

**65.**—(1) Payment of a penalty under this Chapter must be made to, or at the office of, the fixed penalty clerk specified in the penalty notice relating to that penalty.

(2) Without prejudice to payment by any other method, payment of a penalty under this Chapter may be made by properly addressing, pre-paying and posting a letter containing the penalty notice and the amount of the penalty and, unless the contrary is proved, shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(3) A letter is properly addressed for the purposes of subsection (2) if it is addressed to the fixed penalty clerk specified in the penalty notice relating to the penalty as the address at which the penalty may be paid.

(4) Sums paid by way of a penalty for an offence shall be treated as if they were fines imposed on summary conviction of that offence.

(5) In this Chapter the “fixed penalty clerk” means—

- (a) the clerk of petty sessions; or
- (b) such other person as the Department may by order direct.

### **Registration certificates**

**66.—**(1) This section and section 67 apply where by virtue of section 62(5) a sum determined by reference to the penalty for any offence may be registered under section 67 for enforcement against any person as a fine.

(2) In this section and section 67—

- (a) that sum is referred to as a “sum payable in default”, and
- (b) the person against whom that sum may be so registered is referred to as the “defaulter”.

(3) The Chief Constable—

- (a) may in respect of any sum payable in default issue a certificate (a “registration certificate”) stating that the sum is registrable under section 67 for enforcement against the defaulter as a fine; and
- (b) must cause any certificate so issued to be sent to the fixed penalty clerk.

(4) The Chief Constable may authorise a person to carry out the functions of the Chief Constable under subsection (3).

(5) A registration certificate must—

- (a) give particulars of the offence to which the penalty notice relates; and
- (b) state the name and last known address of the defaulter and the amount of the sum payable in default.

### **Registration of penalty**

**67.—**(1) Where the fixed penalty clerk receives a registration certificate in respect of any sum payable in default, the clerk must register that sum for enforcement as a fine by entering it in the Order Book of a court of summary jurisdiction.

(2) On registering any sum under this section for enforcement as a fine, the fixed penalty clerk must give to the defaulter notice of registration—

- (a) specifying the amount of that sum and requiring payment of it by such date, not less than 21 days from the date of registration, as may be specified in the notice; and
- (b) giving the information with respect to the offence included in the registration certificate by virtue of section 66(5)(a).

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(3) On the registration of any sum in the Order Book of a court of summary jurisdiction by virtue of this section, any statutory provision referring (in whatever terms) to a fine imposed or a sum adjudged to be paid by a conviction of such a court shall, subject to regulations made under subsection (4), have effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration.

(4) The Department may make such regulations with respect to the enforcement of payment of sums registered under this section as it considers appropriate.

(5) Regulations under subsection (4) may in particular—

- (a) modify the provisions of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) relating to the satisfaction and enforcement of sums adjudged to be paid by a conviction, as they have effect by virtue of subsection (3) in relation to sums registered under this section; and
- (b) make such incidental, supplemental or consequential provision (including provision to modify a statutory provision) as appears to the Department to be expedient.

(6) In subsection (5) “modify” includes the making of additions, omissions, exceptions and amendments.

### **Challenge to notice**

**68.**—(1) This section applies where—

- (a) a person who has received notice of the registration of a sum under section 67 for enforcement against that person as a fine makes a statutory declaration to the effect mentioned in subsection (2), and
- (b) that declaration is, within 21 days of the date on which the person making it received notice of the registration, served on the fixed penalty clerk.

(2) The statutory declaration must state—

- (a) that the person making the declaration was not the person to whom the relevant penalty notice was given, or
- (b) that the person gave notice requesting to be tried in respect of the alleged offence as permitted by the penalty notice before the end of the suspended enforcement period.

(3) In any case within subsection (2)(a), the relevant penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) In any case within subsection (2)(b)—

- (a) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void, and

- (b) the case shall be treated after the declaration is served as if the person making the declaration had given notice requesting to be tried in respect of the alleged offence as stated in the declaration.
- (5) References in this section to the relevant penalty notice are to the penalty notice relating to the penalty concerned.
- (6) In any case within subsection (2)(b), Article 19(1)(a) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (limitation of time) shall have effect as if for the reference to the time when the offence was committed there were substituted a reference to the date of the statutory declaration made for the purposes of subsection (1).
- (7) Subsection (8) applies where, on the application of a person who has received notice of the registration of a sum under section 67 for enforcement against that person as a fine, it appears to a court of summary jurisdiction that it was not reasonable to expect that person to serve, within 21 days of the date on which that person received the notice, a statutory declaration to the effect mentioned in subsection (2).
- (8) The court may accept service of such a declaration by that person after that period has expired; and a statutory declaration so accepted shall be taken to have been served as required by subsection (1).
- (9) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.
- (10) For the purposes of this section, a person shall be taken to receive notice of the registration of a sum under section 67 for enforcement against that person as a fine when that person receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.
- (11) Nothing in this section is to be read as prejudicing any rights a person may otherwise have by virtue of the invalidity of any action purportedly taken under this Chapter which is not in fact authorised by this Chapter in the circumstances of the case.
- (12) Accordingly, references in this section to the registration of any sum or to any other action taken under this Chapter are not to be read as implying that the registration or action was validly made or taken in accordance with that provision.

#### **Setting aside of sum enforceable under section 67**

- 69.—**(1) A court of summary jurisdiction may, in the interests of justice, set aside a sum enforceable as a fine as a result of section 67.
- (2) Where a court sets aside such a sum, it must give a direction that either—

- (a) no further action is to be taken in respect of the alleged offence that gave rise to the penalty notice concerned; or
  - (b) that the case is to be treated as if the person concerned had given notice requesting to be tried in respect of the offence.
- (3) Where a court gives a direction under subsection (2)(a), the penalty notice concerned, the registration and any proceedings taken for enforcing payment of the sum registered shall be void.
- (4) Where a court gives a direction under subsection (2)(b)—
- (a) the registration and any proceedings taken for enforcing payment of the sum registered shall be void; and
  - (b) Article 19(1)(a) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (limitation of time) shall have effect as if for the reference to the time when the offence was committed there were substituted a reference to the date of the setting aside.
- (5) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.

### *Interpretation*

#### **Interpretation of this Chapter**

**70.** In this Chapter—

- “defaulter” has the meaning given in section 66(2);
- “fixed penalty clerk” has the meaning given by section 65(5);
- “penalty notice” has the meaning given in section 60(3);
- “penalty offence” has the meaning given in section 59(1);
- “registration certificate” has the meaning given in section 66(3);
- “request to be tried” has the meaning given by section 62(4);
- “sum payable in default” has the meaning given by section 66(2);
- “suspended enforcement period” has the meaning given by section 63(1).

## CHAPTER 2

### CONDITIONAL CAUTIONS

#### **Conditional cautions**

**71.—(1)** An authorised person may give a conditional caution to a person aged 18 or over (“the offender”) if each of the five requirements in section 72 is satisfied.

(2) In this Chapter “conditional caution” means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.

(3) The conditions which may be attached to such a caution are those which have either or both of the following objects—

- (a) facilitating the rehabilitation of the offender,
- (b) ensuring that the offender makes reparation for the offence.

(4) In this Chapter “authorised person” means—

- (a) a police officer, or
- (b) a person authorised by the Director of Public Prosecutions for Northern Ireland for the purposes of this section.

### **The five requirements**

**72.**—(1) The first requirement is that the authorised person has evidence that the offender has committed an offence, other than an offence triable only on indictment.

(2) The second requirement is that a Public Prosecutor decides—

- (a) that there is sufficient evidence to charge the offender with the offence, and
- (b) that a conditional caution should be given to the offender in respect of the offence.

(3) The third requirement is that the offender admits to the authorised person that the offender committed the offence.

(4) The fourth requirement is that the authorised person explains the effect of the conditional caution to the offender and warns the offender that failure to comply with any of the conditions attached to the caution may result in the offender’s being prosecuted for the offence.

(5) The fifth requirement is that the offender signs a document which contains—

- (a) details of the offence,
- (b) an admission by the offender that the offender committed the offence,
- (c) the consent of the offender to being given the conditional caution, and
- (d) the conditions attached to the caution.

### **Variation of conditions**

**73.** A Public Prosecutor may, with the consent of the offender, vary the conditions attached to a conditional caution by—

- (a) modifying or omitting any of the conditions;
- (b) adding a condition.



**Failure to comply with conditions**

74.—(1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the offender for the offence in question.

(2) The document mentioned in section 72(5) is to be admissible in such proceedings.

(3) Where such proceedings are instituted, the conditional caution is to cease to have effect.

**Arrest for failure to comply**

75.—(1) If a constable has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, the constable may arrest the offender without warrant.

(2) A person arrested under this section must be—

- (a) charged with the offence in question,
- (b) released without charge and on bail to enable a decision to be made as to whether the person should be charged with the offence, or
- (c) released without charge and without bail (with or without any variation in the conditions attached to the caution).

(3) Subsection (2) also applies in the case of—

- (a) a person who, having been released on bail under subsection (2)(b), returns to a police station to answer bail or is otherwise in police detention at a police station;
- (b) a person who, having been released on bail under Article 32A of PACE (bail elsewhere than at police station) as applied by section 76, attends at a police station to answer bail or is otherwise in police detention at a police station;
- (c) a person who is arrested under Article 32D or 47A of PACE (power of arrest for failure to answer to police bail) as applied by section 76.

(4) Where the offender is released under subsection (2)(b), the custody officer must inform the offender that the offender is being released to enable a decision to be made as to whether the offender should be charged with the offence in question.

(5) A person arrested under this section, or any other person in whose case subsection (2) applies, may be kept in police detention to enable that person to be dealt with in accordance with that subsection.

If the person is not in a fit state to enable that person to be so dealt with, or to enable that power to be exercised, that person may be kept in police detention until that person is.

(6) The power under subsection (5) includes power to keep the person in police detention if it is necessary to do so for the purpose of investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution.

(7) Subsection (2) must be complied with as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

(8) Subsection (2) does not require a person who—

(a) falls within subsection (3)(a) or (b), and

(b) is in police detention in relation to a matter other than the conditional caution,

to be released if the person is liable to be kept in detention in relation to that other matter.

(9) In this Chapter—

“PACE” means the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(NI 12\)](#);

“police detention” has the same meaning as in PACE (see Article 2(3) of PACE).

### **Application of PACE provisions**

**76.—**(1) In the case of a person arrested under section 75, the provisions of PACE specified in subsection (2) apply, with the modifications specified in subsection (3) and with such further modifications as are necessary, as they apply in the case of a person arrested for an offence.

(2) The provisions are—

(a) Article 32 (arrest elsewhere than at police station);

(b) Articles 32A to 32D (bail elsewhere than at police station);

(c) Article 33 (arrest for further offence);

(d) Article 35(1) to (6) (limitations on police detention);

(e) Article 37 (custody officers at police stations);

(f) Article 38(4) to (6) (record of grounds for detention);

(g) Article 39 (duties of custody officer after charge);

(h) Article 40 (responsibilities in relation to persons detained);

(i) Article 56A (x-rays and ultrasound scans).

(3) The modifications are—

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- (a) in Article 37(5) and (7), for the references to being involved in the investigation of an offence for which the person is in police detention substitute references to being involved—
    - (i) in the investigation of the offence in respect of which the person was given the conditional caution, or
    - (ii) in investigating whether the person has failed, without reasonable excuse, to comply with any of the conditions attached to the conditional caution;
  - (b) in Article 39(1)(a)(ia), for “arrested for” substitute “charged with”;
  - (c) in Article 40(2) and (3), for the references to an offence substitute references to a failure to comply with conditions attached to the conditional caution.
- (4) Article 41 of PACE (review of police detention) applies to a person in police detention by virtue of section 75 as it applies to a person in police detention in connection with the investigation of an offence, but with the following modifications—
- (a) omit paragraphs (8) and (8A);
  - (b) in paragraph (9), for the reference to Article 38(9) substitute a reference to the second sentence of section 75(5).
- (5) The following provisions of PACE apply to a person released on bail under section 75(2)(b) as they apply to a person released on bail under Article 38 of PACE—
- (a) Article 47A (power of arrest for failure to answer to police bail);
  - (b) Article 48 (bail after arrest).
- (6) Article 55 of PACE (searches of detained persons) applies in the case of a person who falls within subsection (3) of section 75 and is detained in a police station under that section as it applies in the case of a person who falls within Article 35(8) of PACE and is detained at a police station under Article 38.
- (7) Article 55A of PACE (searches and examination to ascertain identity) applies with the following modifications in the case of a person who is detained in a police station under section 75—
- (a) in paragraphs (1)(a) and (12), after “as a person involved in the commission of an offence” insert “or as having failed to comply with any of the conditions attached to his conditional caution”;
  - (b) in paragraph (9)(a), after “the investigation of an offence” insert “, the investigation of whether the person in question has failed to comply with any of the conditions attached to his conditional caution”.

**Code of practice**

77.—(1) The Department must prepare a code of practice in relation to conditional cautions.

(2) The code may, in particular, include provision as to—

- (a) the circumstances in which conditional cautions may be given,
- (b) the procedure to be followed in connection with the giving of such cautions,
- (c) the conditions which may be attached to such cautions and the time for which they may have effect,
- (d) the category of authorised person by whom such cautions may be given,
- (e) the persons who may be authorised by the Director of Public Prosecutions for Northern Ireland for the purposes of section 71,
- (f) the form which such cautions are to take and the manner in which they are to be given and recorded,
- (g) the places where such cautions may be given,
- (h) the monitoring of compliance with conditions attached to such cautions,
- (i) the exercise of the power of arrest conferred by section 75(1), and
- (j) who is to decide how a person should be dealt with under section 75(2).

(3) After preparing a draft of the code the Department—

- (a) must publish the draft,
- (b) must consider any representations made to it about the draft, and
- (c) may amend the draft accordingly,

but the Department may not publish or amend the draft without the consent of the Attorney General for Northern Ireland.

(4) After the Department has proceeded under subsection (3), it must lay the code before the Assembly.

(5) When the Department has done so it may bring the code into operation by order.

(6) No order may be made under subsection (5) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(7) The Department may from time to time revise a code of practice brought into operation under this section.

(8) Subsections (3) to (7) are to apply (with appropriate modifications) to a revised code as they apply to an original code.

**Powers of Probation Board**

**78.** The powers of the Probation Board for Northern Ireland include power to make provision for—

- (a) Public Prosecutors to be given assistance in determining whether conditional cautions should be given and which conditions to attach to conditional cautions;
- (b) the supervision and rehabilitation of persons to whom conditional cautions are given.

**Interpretation of this Chapter**

**79.** In this Chapter—

- “authorised person” has the meaning given by section 71(4),
- “conditional caution” has the meaning given by section 71(2),
- “the offender” has the meaning given by section 71(1),
- “PACE” and “police detention” have the meanings given by section 75(9),
- “Public Prosecutor” has the meaning given by section 29(5) of the Justice (Northern Ireland) Act 2002 (c. 26).